

Brian E. Holthus, Esq.
Nevada Bar No. 2720
E-mail: beh@juwlaw.com
JOLLEY URG & HOLTHUS
50 S. Stephanie Street, Suite 202
Henderson, Nevada 89012
Telephone: (702) 699-7500
Facsimile: (702) 699-7555

KELLER POSTMAN LLC
Warren Postman (*Pro Hac Vice forthcoming*)
wdp@kellerpostman.com
1100 Vermont Avenue, N.W., 12th Floor
Washington, D.C. 20005
Phone: (202) 918-1123
Facsimile: (312) 971-3502

Ashley Keller (*Pro Hac Vice forthcoming*)
ack@kellerpostman.com
Ashley Barriere (*Pro Hac Vice forthcoming*)
ashley.barriere@kellerpostman.com
150 N. Riverside Plaza, Suite 4100
Chicago, IL 60606
Phone (312) 741-5222
Facsimile: (312) 971-3502
*Attorneys for Plaintiff Anastasia Reveal
Individually and as Mother, General
Guardian of K.W., a Minor*

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

ANASTASIA REVEAL INDIVIDUALLY
AND AS MOTHER, GENERAL GUARDIAN
OF K.W., a MINOR

Plaintiffs,

vs.

COSTCO WHOLESALE CORPORATION,

Defendant.

CASE NO.:

COMPLAINT

Plaintiff Anastasia Reveal and Plaintiff K.W., pursuant to Fed. R. Civ. P. 17(c)(1)(A), by
and through their undersigned counsel, bring this Complaint for damages against Defendant

1 Costco Wholesale Corporation, (hereinafter, “Costco” or “Defendant”) and in support state the
2 following:

3 1. This is an action brought on behalf of Plaintiffs, Anastasia Reveal (hereinafter,
4 “Plaintiff Mother”), the mother and guardian of K.W. (hereinafter, “Plaintiff Child”), a minor,
5 arising out of the failure of Defendant to warn about the dangers of prenatal exposure to
6 Paracetamol, also known as Acetaminophen (hereinafter “APAP”) and its propensity to cause
7 attention-deficit/hyperactivity disorder (“ADHD”) in children. As a result, Plaintiffs have
8 suffered permanent injuries and significant pain and suffering, emotional distress, lost wages and
9 earning capacity, and diminished quality of life. Plaintiffs respectfully seek all damages to
10 which they may be legally entitled.

11 2. Defendant entirely failed its duty to adequately warn of the hazards of prenatal
12 exposure to APAP, which was a direct and proximate cause of Plaintiffs’ injuries and associated
13 damages.

14 STATEMENT OF PARTIES

15 3. At all material times Plaintiffs have been citizens and residents of Clark County,
16 Nevada, and the United States.

17 4. Costco is incorporated in Washington, with its principal place of business also in
18 Washington.

19 5. Costco is a multinational company involved in the research, development, testing,
20 manufacture, labeling, production, marketing, promotion, and/or sale of APAP through its over-
21 the-counter store brand, “Kirkland” (hereinafter, the “Kirkland APAP”).

22 6. Costco is individually, and jointly and severally liable to Plaintiffs for damages
23 they suffered, arising from Defendant’s design, manufacture, marketing, labeling, distribution,
24 sale, and placement of the defective Kirkland APAP into the market, effectuated directly and
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indirectly through its agents, servants, employees, and/or owners, all acting within the course and scope of its agencies, services, employments, and/or ownership.

7. Costco is vicariously liable for the acts and/or omissions of its employees and/or agents, who were at all material times acting on behalf of Costco and within the scope of its employment or agency.

VENUE AND JURISDICTION

8. This Court has subject-matter jurisdiction under 28 U.S.C. § 1332(a), based on complete diversity of citizenship between Plaintiffs and Defendant. *See supra* ¶¶ 3–4.

9. The amount in controversy exceeds \$75,000.

10. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because the events or omissions giving rise to Plaintiffs' claims occurred in this judicial district.

11. Defendant has and continues to conduct substantial business in the State of Nevada and in this District, distributes the Kirkland APAP in this District, receives substantial compensation and profits from sales of the Kirkland APAP in this District, and has made material omissions and misrepresentations and breaches of warranties in this District, so as to subject Defendant to in personam jurisdiction in this District.

12. Defendant is registered to transact business in Nevada.

FACTS COMMON TO ALL COUNTS

APAP Is Marketed as the Safe Pain Reliever for Pregnant Women, but APAP Can Cause Neurodevelopment Disorders in Children, such as ADHD

1. APAP was initially discovered in the late 1800's.

2. APAP is sold in billions of units annually in North America alone.

3. APAP is widely used by pregnant women to relieve pain during the term of their pregnancy.

1 4. APAP was introduced to the US market in 1955 as the first aspirin-free pain
2 reliever.

3 5. APAP has long been marketed as the safest, and the *only* appropriate, over-the-
4 counter pain relief drug on the market for pregnant women.

5 6. More than 65% of women in the United States use APAP during pregnancy.

6 7. Based upon information and belief, a majority of women who use APAP during
7 pregnancy do so electively for the treatment of headaches, muscle pain, back pain, and infection.

8 8. These pregnant women electively choose to take APAP because Defendant has
9 marketed APAP as a safe pain reliever for pregnant women.

10 9. However, increasing experimental and epidemiological research shows that
11 prenatal exposure to APAP alters fetal development, which significantly increases the risks of
12 neurodevelopmental disorders, including but not limited to, autism spectrum disorder (“ASD”)
13 and attention-deficit/hyperactivity disorder.

14 10. Undisturbed development of the human brain in utero is vital to the health and
15 wellness of a child’s development. The human brain is vulnerable and extremely sensitive in
16 utero.

17 11. During this sensitive time-period in utero, certain chemicals have been found to
18 cause permanent brain injury at low exposure levels.

19 12. Once ingested by the mother, APAP is known to readily cross the placenta and
20 blood-brain barrier.

21 13. ADHD is a chronic neurodevelopmental disorder resulting in attention difficulty,
22 hyperactivity, and impulsiveness.

1 14. ADHD begins in childhood and persists through adulthood. ADHD contributes
2 to low self-esteem, troubled relationships, and difficulty with school, work, and familial
3 relationships.

4 15. Treatments for ADHD, include, but are not limited to, chronic medication usage
5 and various therapies. Treatment for ADHD lasts a lifetime, as there is no cure.

6 16. Adults with childhood ADHD are expected to earn \$1.25 million less than adults
7 without ADHD over their lifetime, potentially reaching retirement up to 75 percent lower net
8 worth
9

10 17. In or around 2018, the Center for Disease Control and Prevention (“CDC”) found
11 that 1 in 44 (2.3%) 8-year-old children have been diagnosed with ASD.

12 18. This represents an increase from a prior CDC finding that 1 in 68 U.S. children
13 born in 2002 have ASD, which already represented a more than a 100% increase compared with
14 children born a decade prior.

15 19. In 2018, a study found that ADHD diagnoses in children increased from 6.1% in
16 1997-1998 to 10.2% in 2015-2016.

17 20. As of 2019, 8.8% of children had been diagnosed with ADHD, or roughly
18 325,000 children per year.
19

20 21. Parental awareness and changes in diagnoses do not account for the rapid rise in
21 these diagnoses.
22

23 22. Rather, neurotic exposures, such as prenatal APAP exposure, explain a trending
24 increase in diagnosis.

25 23. For years, the scientific community has published studies showing that prenatal
26 ingestion of APAP can cause neurodevelopmental disorders, such as ASD and ADHD.
27
28

1 24. For instance, since 2013, there have been six European birth cohort studies,
2 examining over 70,000 mother-child pairs, showing the association between prenatal use of
3 APAP and ASD and ADHD.

4 25. At this time, the overall body of scientific evidence shows that prenatal use of
5 APAP can cause neurodevelopmental disorders like ADHD in the child.

6 26. During all relevant times herein, Defendant was engaged in the business of
7 manufacturing and selling the Kirkland APAP in the United States, and the weight of the
8 scientific evidence available showed prenatal exposure to APAP significantly increases the risk
9 of neurodevelopmental disorders in children exposed to APAP prenatally, including but not
10 limited to ADHD.

11 27. The scientific evidence regarding the risks of in utero exposure of APAP was
12 available to Defendant, and Defendant knew or should have known that prenatal use of APAP
13 can cause ADHD.

14 28. Based on information and belief, Defendant has concealed the prenatal APAP
15 exposure-neurodevelopmental link from consumers, like Plaintiff Mother, in part by not
16 reporting the link to the FDA, which relies on drug manufacturers to bring new information
17 about a drug to the agency's attention.

18 29. Moreover, despite knowing that prenatal use of APAP can cause ADHD,
19 Defendant continues to market the Kirkland APAP as the safe pain reliever for pregnant women,
20 making mothers believe they are choosing a safe drug for even minor aches, pains, and
21 headaches.

22 **Plaintiff Mother Took Kirkland APAP while Pregnant,**
23 **and It Caused ADHD in Plaintiff Child**

24 30. Plaintiff Mother began using the Kirkland APAP in or around December 2011,
25 when she was pregnant with Plaintiff Child.

1 31. Throughout Plaintiff Mother's pregnancy, she took the Kirkland APAP almost
2 every day to treat back and joint pain associated with arthritis and back issues.

3 32. Plaintiff Mother believed it was safe for her to take the APAP Products during
4 her pregnancy.

5 33. Indeed, Plaintiff Mother was instructed to not take ibuprofen or aspirin while
6 pregnant but was informed she could take APAP freely and without risk.

7 34. There is no warning on the Kirkland APAP labels specifically addressing the
8 risks of a child developing ADHD if a mother ingests APAP while pregnant.

9 35. Had Plaintiff Mother known of the risk of taking APAP while pregnant,
10 specifically that it could cause ADHD in her child, she would not have taken the Kirkland
11 APAP.

12 36. Plaintiff Child was born on August 16, 2012.

13 37. Plaintiff Mother started to have concerns about Plaintiff Child's development
14 when she was in the first grade, when she was six or seven years old.

15 38. That same year, Plaintiff Child was diagnosed with ADHD.

16 39. As a result of Plaintiff Child's ADHD, Plaintiff Child was held back that year in
17 the first grade.

18 40. Plaintiff Child continues to have behavioral and communication issues at home
19 and in school as a result of her ADHD.

20 41. Plaintiff Child's behavioral issues impede her development and growth; she is
21 unable to play sports or engage in other activities because of her behavior problems.

22 42. These issues have a huge impact on both Plaintiff Mother's and Plaintiff Child's
23 daily life.

24 ///

1 **ESTOPPEL AND TOLLING OF STATUTE OF LIMITATIONS**

2 43. Due to Defendant's acts of fraudulent concealment, Defendant is estopped from
3 relying on any statutes of limitations or repose. Such acts include Defendant's intentional
4 concealment from Plaintiff Mother and the general public that APAP is defective when there is
5 prenatal exposure, while continuing to market the Kirkland APAP with the adverse effects
6 described in this Complaint.
7

8 44. Given Defendant's affirmative actions of concealment by failing to disclose
9 information about the defects known to them but not the public—information over which
10 Defendant had exclusive control—and because Plaintiff Mother could not reasonably have
11 known that the Kirkland APAP was defective, Defendant is estopped from relying on any
12 statutes of limitations that might otherwise be applicable to the claims asserted in this Complaint.
13

14 **COUNT I: STRICT LIABILITY – FAILURE TO WARN**

15 45. Plaintiffs incorporate by reference the allegations in all prior paragraphs.

16 46. At the time of Plaintiffs' injuries, the Kirkland APAP was defective and
17 unreasonably dangerous to foreseeable consumers, including Plaintiff Mother, because they
18 lacked an adequate warning.
19

20 47. At all relevant times, Defendant engaged in the business of testing, developing,
21 designing, manufacturing, marketing, labeling, selling, distributing, and promoting the Kirkland
22 APAP, which was defective and unreasonably dangerous to consumers, including Plaintiff
23 Mother, because they did not contain adequate warnings or instructions concerning the
24 dangerous characteristics of ingesting APAP during pregnancy. These actions were under the
25 ultimate control and supervision of Defendant. At all relevant times, Defendant registered,
26 researched, manufactured, distributed, marketed, labeled, promoted, and sold the Kirkland
27 APAP within this District and aimed the marketing at the ultimate consumer. Defendant was at
28

1 all relevant times involved in the retail and promotion of the Kirkland APAP marketed and sold
2 in this District.

3 48. Defendant had a duty to warn of the risks associated with the use of the Kirkland
4 APAP.

5 49. The Kirkland APAP ingested by Plaintiff Mother during pregnancy was in the
6 same or substantially similar condition as it was when it left possession of the Defendant.
7

8 50. Defendant expected and intended the Kirkland APAP to reach users such as
9 Plaintiff Mother in the condition in which the Kirkland APAP was sold.

10 51. Plaintiff Mother did not materially alter the Kirkland APAP prior to ingestion.

11 52. Plaintiff Mother ingested the Kirkland APAP as indicated on the Kirkland APAP
12 labels.

13 53. Plaintiff Mother was unaware of the defects and dangers of the Kirkland APAP
14 and was unaware that prenatal exposure increases the risk of brain and behavioral development
15 of children in utero.
16

17 54. The labels on the Kirkland APAP to consumers lack any warning specific to
18 pregnant women. The information that Defendant did provide or communicate failed to contain
19 relevant warnings, hazards, and precautions that would have enabled consumers such as Plaintiff
20 Mother to utilize the products safely and with adequate protection, or decide to not ingest the
21 Kirkland APAP at all.
22

23 55. This alleged failure to warn is not limited to the information contained on the
24 Kirkland APAP' labeling. Defendant was able, in accord with federal law, to comply with
25 relevant state law by disclosing the known risks associated with APAP through other non-
26 labeling mediums, i.e., promotion, advertisements, public service announcements, and/or public
27 information sources. But Defendant did not disclose these known risks through any medium.
28

1 56. At all relevant times, Defendant had a duty to properly test, develop, design,
2 manufacture, inspect, package, label, market, promote, sell, distribute, maintain, and supply the
3 Kirkland APAP; provide proper warnings for the Kirkland APAP; and take such steps as
4 necessary to ensure the Kirkland APAP did not cause users and consumers, and their children, to
5 suffer from unreasonable and dangerous risks. Defendant had a continuing duty to warn Plaintiff
6 Mother of dangers associated with APAP. Defendant, as a manufacturer, seller, and/or
7 distributor of pharmaceutical medication, is held to the knowledge of an expert in the field.
8

9 57. At the time of manufacture, Defendant could have provided the warnings or
10 instructions regarding the full and complete risks of the Kirkland APAP because Defendant
11 knew or should have known of the unreasonable risks of ADHD associated with prenatal
12 exposure to and/or the use of such products.
13

14 58. At all relevant times, Defendant failed and deliberately refused to investigate,
15 study, test, or promote the safety of the Kirkland APAP, or to minimize the dangers to
16 consumers of the Kirkland APAP and to those who would foreseeably use or be harmed by the
17 Kirkland APAP, including Plaintiffs.
18

19 59. Defendant failed to adequately warn consumers, like Plaintiff Mother, about the
20 significant increased risk of neurodevelopmental disorders in children exposed to APAP
21 prenatally, including but not limited to ADHD.
22

23 60. Defendant failed to adequately inform reasonably foreseeable consumers, like
24 Plaintiff Mother, of the proper usage of the Kirkland APAP.
25

26 61. Even though Defendant knew or should have known that APAP posed a grave
27 risk of harm to Plaintiff Child, Defendant failed to exercise reasonable care to warn of the
28 dangerous risks associated with use and prenatal exposure.

1 62. Plaintiff Mother was exposed to the Kirkland APAP without knowledge of their
2 dangerous characteristics.

3 63. At all relevant times, Plaintiff Mother used and/or was exposed to the use of the
4 Kirkland APAP while using them for their intended or reasonably foreseeable purposes, without
5 knowledge of their dangerous characteristics.
6

7 64. Plaintiff Mother could not have reasonably discovered the defects and risks
8 associated with the Kirkland APAP prior to or at the time of Plaintiff consuming APAP.
9 Plaintiff Mother relied upon the skill, superior knowledge, and judgment of Defendant to know
10 about and disclose serious health risks associated with using the Kirkland APAP.

11 65. If Plaintiff Mother had been properly warned of the defects, dangers, and risks
12 associated with prenatal exposure to APAP, Plaintiff Mother would have utilized the Kirkland
13 APAP safely and with adequate protection, or would have decided to not ingest the Kirkland
14 APAP at all.
15

16 66. Defendant is liable to Plaintiffs for injuries caused by Defendant's negligent or
17 willful failure, as described above, to provide adequate warnings or other relevant information
18 and data regarding the appropriate use of the Kirkland APAP and the risks associated with the
19 use of APAP.
20

21 67. As a direct and proximate result of Defendant placing defective Kirkland APAP
22 into the stream of commerce, and Plaintiff Mother's ingestion of the Kirkland APAP during
23 pregnancy, Plaintiff Child was exposed to APAP prenatally, causing her to develop ADHD.

24 68. As a direct and proximate result of Defendant placing defective Kirkland APAP
25 into the stream of commerce, Plaintiffs have suffered permanent injuries, significant pain and
26 suffering, emotional distress, lost wages and earning capacity, and diminished quality of life.
27 Plaintiffs respectfully seek all damages to which they may be legally entitled.
28

COUNT II: NEGLIGENCE

69. Plaintiffs incorporate by reference the allegations in all prior paragraphs.

70. Although Defendant had a duty to use reasonable care in testing, developing, designing, manufacturing, marketing, labeling, selling, distributing, promoting, and preparing written instructions and warnings for the Kirkland APAP, Defendant failed to do so.

71. Defendant, directly or indirectly, caused the Kirkland APAP to be sold, distributed, packaged, labeled, marketed, promoted, and/or used by Plaintiff Mother. At all relevant times, Defendant registered, researched, manufactured, distributed, marketed, promoted, and sold the Kirkland APAP within this district and aimed at a consumer market within this district.

72. Defendant knew, or in the exercise of reasonable care should have known, that the Kirkland APAP was defectively and unreasonably designed and/or manufactured, and/or marketed, and was unreasonably dangerous and likely to injure persons that were prenatally exposed to them. Defendant knew or should have known that Plaintiff Mother was unaware of the dangers and defects inherent in the Kirkland APAP when she was ingesting them during her pregnancy with Plaintiff Child.

73. At all relevant times, Defendant had a duty to exercise reasonable care in the marketing, advertisement, promotion, and sale of the Kirkland APAP. Defendant's duty of care owed to consumers and the general public included providing accurate, true, and correct information concerning the risks of using APAP during pregnancy and appropriate, complete, and accurate warnings concerning the potential adverse effects of APAP and, in particular, the significantly increased risk of causing neurodevelopmental disorders in children through prenatal exposure to APAP.

1 74. At all relevant times, Defendant knew or, in the exercise of reasonable care,
2 should have known of the hazards and dangers of APAP ingestion while pregnant and,
3 specifically, the significantly increased risk of causing neurodevelopmental disorders in children
4 through prenatal exposure to APAP.

5 75. Defendant failed to provide any kind of warning to pregnant consumers, like
6 Plaintiff Mother, about the significantly increased risk of causing neurodevelopmental disorders
7 in children through prenatal exposure to APAP.

8 76. Accordingly, at all relevant times, Defendant knew or, in the exercise of
9 reasonable care, should have known that use of the Kirkland APAP could cause Plaintiffs'
10 injuries, and thus, create a dangerous and unreasonable risk of injury to the users of these
11 products, including Plaintiffs.

12 77. As such, Defendant breached its duty of reasonable care and failed to exercise
13 ordinary care in the design, research, development, manufacture, testing, marketing, labeling,
14 supply, promotion, advertisement, packaging, sale, and distribution of the Kirkland APAP, in
15 that Defendant manufactured and produced defective Kirkland APAP, which carry the
16 significantly increased risk of causing neurodevelopmental disorders in children through prenatal
17 exposure to APAP; knew or had reason to know of the defects inherent in the Kirkland APAP;
18 knew or had reason to know that a user's or consumer's use of the Kirkland APAP created a
19 significant risk of harm and unreasonably dangerous side effects; and failed to prevent or
20 adequately warn of these risks and injuries.

21 78. Defendant had a duty to disclose the truth about the risks associated with APAP
22 in its promotional efforts outside of the context of labeling. Defendant was negligent in its
23 promotion of APAP outside of the labeling context by failing to disclose material risk
24

1 information as part of its promotion and marketing of the Kirkland APAP, including through the
2 internet, television, and print advertisements.

3 79. Despite Defendant's ability and means to investigate, study, and test the Kirkland
4 APAP and to provide adequate warnings, Defendant failed to do so. Indeed, Defendant
5 wrongfully concealed information and further made false and/or misleading statements
6 concerning the safety and use of APAP.
7

8 80. Defendant's negligence included:

- 9 a. Manufacturing, producing, promoting, formulating, creating, developing,
10 designing, selling, and/or distributing the Kirkland APAP while negligently
11 and/or intentionally concealing and failing to disclose the results of trials, tests,
12 and studies of APAP and the significantly increased risk of causing
13 neurodevelopmental disorders in children through prenatal exposure to APAP,
14 and, consequently, the risk of serious harm associated with human use of APAP
15 during pregnancy;
16
17 b. Failing to undertake sufficient studies and conduct necessary tests to determine
18 whether or not the Kirkland APAP were safe for its intended consumer use and
19 unborn children;
20
21 c. Failing to provide adequate instructions, guidelines, and safety precautions to
22 those persons Defendant could reasonably foresee would use the Kirkland APAP;
23
24 d. Failing to disclose to Plaintiff Mother, users, consumers, and the general public
25 that use of APAP during pregnancy presents severe risks of neurodevelopmental
26 disorders in children exposed to APAP prenatally;
27
28 e. Failing to warn Plaintiff Mother, users, consumers, and the general public that the
Kirkland APAP' risk of harm was unreasonable and that there were safer and

1 effective alternative medications or treatments available to Plaintiff Mother and
2 other users and/or consumers;

3 f. Representing that the Kirkland APAP were safe for their intended purposes for
4 pregnant women when, in fact, Defendant knew or should have known the
5 Kirkland APAP was not safe for their intended purposes;

6 g. Declining to make or propose any changes to the Kirkland APAP' labeling or
7 other promotional materials that would alert users, consumers, and the general
8 public of the risks of APAP, including to pregnant women;

9 h. Advertising, marketing, and recommending the use of the Kirkland APAP, while
10 concealing and failing to disclose or warn of the dangers known by Defendant to
11 be caused by the use of or exposure to APAP;

12 i. Continuing to disseminate information to its consumers and the general public,
13 which indicates or implies that the Kirkland APAP are not unsafe for pregnant
14 consumer use; and

15 j. Continuing the manufacture and sale of the Kirkland APAP with the knowledge
16 that the Kirkland APAP was unreasonably unsafe and dangerous.

17 81. Defendant knew and/or should have known that it was foreseeable that children
18 such as Plaintiff Child would suffer injuries as a result of Defendant's failure to exercise
19 ordinary care in the manufacturing, marketing, labeling, distribution, and sale of the Kirkland
20 APAP to consumers, like Plaintiff Mother.

21 82. Plaintiff Mother did not know the nature and extent of the injuries that could
22 result in her child from the intended use of and/or exposure to APAP prenatally.

23 83. Defendant's negligence was the proximate cause of Plaintiffs' injuries, i.e., absent
24 Defendant's negligence, Plaintiff Child would not have developed ADHD.
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1 84. Defendant's conduct, as described above, was reckless. Defendant regularly
2 risked exposing Plaintiff Mother to the Kirkland APAP while pregnant with Plaintiff Child, with
3 full knowledge of the dangers of the Kirkland APAP and that it could cause ADHD in Plaintiff
4 Child. Defendant made conscious decisions not to redesign, re-label, warn, or inform the
5 unsuspecting public, including Plaintiff Mother. Defendant's reckless conduct therefore
6 warrants an award of punitive damages.
7

8 85. As a direct and proximate result of Defendant placing the defective Kirkland
9 APAP into the stream of commerce, Plaintiffs have suffered permanent injuries, significant pain
10 and suffering, emotional distress, lost wages and earning capacity, and diminished quality of life.
11 Plaintiffs respectfully seek all damages to which they may be legally entitled.
12

13 **COUNT III: BREACH OF EXPRESS WARRANTY**

14 86. Plaintiffs incorporate by reference the allegations in all prior paragraphs.

15 87. At all material times, Defendant manufactured, marketed, sold, distributed, and
16 otherwise placed into the stream of commerce the Kirkland APAP. These actions were under
17 the ultimate control and supervision of Defendant.

18 88. In advertising, marketing, and promoting the Kirkland APAP to consumers, like
19 Plaintiff Mother, Defendant expressly warranted that the Kirkland APAP was safe for use and
20 reasonably fit for their intended purposes. In advertising, marketing, and otherwise promoting
21 the Kirkland APAP, Defendant intended for pregnant consumers to rely upon its representations
22 regarding safety and fitness, in an effort to induce them to purchase and consume the Kirkland
23 APAP during pregnancy to relieve pain.
24

25 89. Defendant expressly warranted to Plaintiff Mother and pregnant consumers that
26 the Kirkland APAP was safe for ingestion during pregnancy.
27
28

1 90. Defendant had a duty to exercise reasonable care in the research, development,
2 design, testing, packaging, manufacture, inspection, labeling, distributing, marketing, promotion,
3 sale, and release of the Kirkland APAP, including a duty to:

- 4 a. ensure that the Kirkland APAP did not cause users and their unborn children
5 unreasonably dangerous side effects;
6 b. warn of dangerous and potentially incurable side effects; and
7 c. disclose adverse material facts, such as the true risks associated with the use of
8 and exposure to APAP during pregnancy, when making representations to users,
9 consumers, and the general public, including Plaintiff Mother.

10 91. Defendant had the ability to properly disclose the risks associated with APAP
11 usage during pregnancy through multiple channels, not just labeling.

12 92. At all relevant times, Defendant expressly represented and warranted to the
13 purchasers of the Kirkland APAP, by and through statements made by Defendant in labels,
14 publications, brochures, and other written materials intended for consumers and the general
15 public, that the Kirkland APAP was safe to human health and the environment, effective, fit, and
16 proper for their intended use. Defendant advertised, labeled, marketed, and promoted the
17 Kirkland APAP, representing the quality to consumers and the public in such a way as to induce
18 their purchases or use, thereby making an express warranty that the Kirkland APAP would
19 conform to the representations.
20

21 93. The representations about the Kirkland APAP, as set forth herein, contained or
22 constituted affirmations of fact or promises made by the seller to the buyer, which related to the
23 goods and became part of the basis of the bargain, creating an express warranty that the goods
24 would conform to the representations.
25
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1 94. Defendant breached express representations and warranties made to Plaintiff
2 Mother, with respect to the Kirkland APAP, including the following:

- 3 a. Defendant represented through its labeling, advertising, and marketing materials
4 that the Kirkland APAP was safe, and intentionally withheld and concealed
5 information about the risks of serious injury associated with use of APAP and by
6 expressly limiting the risks associated with use within its warnings and labels;
7 and
8
9 b. Defendant represented that the Kirkland APAP was safe for use and intentionally
10 concealed information that demonstrated that APAP carries the significantly
11 increased risk of causing neurodevelopmental disorders in children through
12 prenatal exposure to APAP, and that the Kirkland APAP, therefore, was not safer
13 than alternatives available on the market.
14

15 95. Plaintiff Mother detrimentally relied on the express warranties and
16 representations of Defendant concerning the safety and/or risk profile of APAP in deciding to
17 purchase the Kirkland APAP. Plaintiff Mother reasonably relied upon Defendant to disclose
18 known defects, risks, dangers, and side effects of APAP. Plaintiff Mother would not have
19 purchased or used the Kirkland APAP had Defendant properly disclosed the risks associated
20 with the Kirkland APAP, either through advertising, labeling, or any other form of disclosure.
21

22 96. Plaintiff Mother had no knowledge of the falsity or incompleteness of
23 Defendant's statements and representations concerning the Kirkland APAP.

24 97. Plaintiff Mother used and/or was exposed to APAP as researched, developed,
25 designed, tested, manufactured, inspected, labeled, distributed, packaged, marketed, promoted,
26 sold, or otherwise released into the stream of commerce by Defendant.
27
28

1 98. Had the warnings, labels, advertisements, or promotional material for the
2 Kirkland APAP accurately and adequately set forth the true risks associated with the use of such
3 Products, including Plaintiffs' injuries, rather than expressly excluding such information and
4 warranting that the Kirkland APAP was safe for their intended use, Plaintiffs could have avoided
5 the injuries complained of herein.
6

7 99. As a direct and proximate result of Defendant's breach of express warranty,
8 Plaintiffs have suffered permanent injuries, significant pain and suffering, emotional distress,
9 lost wages and earning capacity, and diminished quality of life. Plaintiffs respectfully seek all
10 damages to which they may be legally entitled.
11

12 **COUNT IV: BREACH OF IMPLIED WARRANTY**

13 100. Plaintiffs incorporate by reference the allegations in all prior paragraphs.

14 101. At all material times, Defendant manufactured, marketed, sold, distributed, and
15 otherwise placed the Kirkland APAP into the stream of commerce.

16 102. At all material times, Defendant intended for the Kirkland APAP to be consumed
17 and ingested by pregnant women, like Plaintiff Mother; and Defendant impliedly warranted that
18 the Kirkland APAP and its component parts were of merchantable quality, safe, fit for such use,
19 and adequately tested.
20

21 103. Defendant was aware that consumers, including Plaintiff Mother, would consume
22 and ingest the Kirkland APAP as directed by the Products' labels and promotional materials.
23 Therefore, Plaintiff was a foreseeable user of the Kirkland APAP.

24 104. But Defendant failed to disclose that APAP has dangerous propensities when
25 used as intended and that use of the Kirkland APAP carries an increased risk of developing
26 severe injuries, including Plaintiff Child's injuries.
27
28

105. The Kirkland APAP was expected to reach, and did in fact reach consumers, including Plaintiff Mother, without substantial change in the condition in which they were manufactured and sold by Defendant.

106. Plaintiff Mother was an intended beneficiary of the implied warranties made by Defendant to purchasers of the Kirkland APAP.

107. In reliance upon Defendant's implied warranties, Plaintiff Mother used the Kirkland APAP as indicated, and in the foreseeable manner normally intended, recommended, promoted, and marketed by Defendant.

108. Defendant breached its implied warranties to Plaintiffs in that the Kirkland APAP was not of merchantable quality, nor were they safe or fit for their intended use or adequately tested.

109. The harm caused by the Kirkland APAP far outweighed their benefit, rendering the Kirkland APAP more dangerous than an ordinary consumer or user would expect and more dangerous than alternative products.

110. As a direct and proximate result of Defendant's breach of express warranty, Plaintiffs have suffered permanent injuries, significant pain and suffering, emotional distress, lost wages and earning capacity, and diminished quality of life. Plaintiffs respectfully seek all damages to which they may be legally entitled.

COUNT V: VIOLATION OF CONSUMER PROTECTION LAWS

111. Plaintiffs incorporate by reference the allegations in all prior paragraphs.

112. Plaintiff Mother purchased and used the Kirkland APAP for primarily personal use and pain relief during pregnancy, thereby suffering ascertainable losses as a result of Defendant's actions in violation of the consumer protection laws.

1 113. Had Defendant not engaged in the deceptive conduct described in this Complaint,
2 Plaintiff would not have purchased and/or paid for the Kirkland APAP, and Plaintiffs would not
3 have incurred related injury medical costs.

4 114. Defendant engaged in wrongful conduct while at the same time obtaining under
5 false pretenses moneys from Plaintiff for the Kirkland APAP. Those moneys would not have
6 been paid had Defendant not engaged in unfair and deceptive conduct.

7 115. Defendant engaged in the following unfair methods of competition or deceptive
8 acts or practices, which are proscribed by law:
9

- 10 A. representing that goods or services have characteristics, ingredients, uses,
11 benefits, or qualities they do not have;
12 B. advertising goods or services with the intent not to sell them as advertised;
13 and
14 C. engaging in fraudulent or deceptive conduct creating a likelihood of
15 confusion or misunderstanding.
16

17 116. Plaintiffs were injured by the cumulative nature of Defendant's conduct. The
18 cumulative effect, directed at patients, physicians, and consumers, was to create demand for and
19 sell the Kirkland APAP. Each aspect of Defendant's conduct combined to artificially create
20 sales of the Kirkland APAP.
21

22 117. Defendant had a statutory duty to refrain from unfair or deceptive acts or trade
23 practices in the design, labeling, development, manufacture, promotion, and sale of the Kirkland
24 APAP.

25 118. Defendant's deceptive, unconscionable, or fraudulent representations and material
26 omissions to consumers, including Plaintiff Mother, constitute unfair and deceptive acts and
27 trade practices in violation of the federal and state consumer protection statutes listed below.
28

1 119. Defendant's actions, as complained of in this Complaint, constitute unfair
2 competition or unfair, unconscionable, deceptive, or fraudulent acts or trade practices in
3 violation of the federal and state consumer protection statutes listed below.

4 120. Defendant has engaged in unfair competition, or unfair or deceptive acts or trade
5 practices, or has made false representations under the following statutes:
6

- 7 • 15 U.S.C. §§ 2301–12 (1982); and
- 8 • Nev. Rev. Stat. §§ 598.0903 et seq.

9 121. To protect consumers against unfair, deceptive, fraudulent, and unconscionable
10 trade and business practices, and false advertising, Defendant, as the supplier, manufacturer,
11 advertiser, and seller, is subject to liability under the above legislation enacted against unfair,
12 deceptive, fraudulent, and unconscionable consumer sales practices.

13 122. By knowingly and falsely representing that the Kirkland APAP was fit to be used
14 for the purposes for which they were intended—when in fact they were defective and
15 dangerous—and by other acts alleged, Defendant violated the above statutes, enacted to protect
16 consumers against unfair, deceptive, fraudulent, and unconscionable trade and business
17 practices, and false advertising.
18

19 123. Defendant's actions and omissions are uncured or incurable, deceptive acts under
20 the above legislation.
21

22 124. Defendant had actual knowledge of the defective and dangerous conditions of the
23 Kirkland APAP but failed to take any action to cure such defective and dangerous conditions.

24 125. Plaintiff Mother relied upon Defendant's misrepresentations and omissions in
25 determining which Kirkland APAP (if any) to ingest.

26 126. Defendant's deceptive, unconscionable, or fraudulent representations and material
27 omissions to consumers constituted unfair and deceptive acts and practices.
28

1 127. By reason of the unlawful acts in which Defendant engaged, and as a direct and
2 proximate result thereof, Plaintiffs have suffered ascertainable losses and damages.

3 128. As a direct and proximate result of Defendant's violations of the above-listed
4 legislation, Plaintiffs have sustained economic losses and other damages and are entitled to
5 statutory and compensatory damages in an amount to be proven at trial.
6

7 **COUNT VI: NEGLIGENT MISREPRESENTATION**

8 129. Plaintiffs incorporate by reference the allegations in all prior paragraphs.

9 130. Defendant had a duty to accurately and truthfully represent to consumers,
10 including Plaintiff Mother, and the public that the Kirkland APAP had not been adequately
11 tested and found to be a safe and effective treatment for pregnant women. Defendant breached
12 that duty as its representations were false.
13

14 131. Defendant failed to exercise ordinary care in the representations concerning the
15 Kirkland APAP while Defendant was involved in its manufacture, sale, testing, quality
16 assurance, quality control, and distribution in interstate commerce, because Defendant
17 negligently misrepresented the Kirkland APAP's high risk of unreasonable and dangerous
18 adverse side effects.

19 132. Defendant also breached its duty in representing to Plaintiff Mother that the
20 Kirkland APAP had no serious side effects when ingested during pregnancy.
21

22 133. As a foreseeable, direct, and proximate result of Defendant's negligent
23 misrepresentations, Defendant knew or had reason to know that the Kirkland APAP had been
24 insufficiently tested or had not been tested at all; and that they lacked adequate and accurate
25 warnings, and created a high risk, or a higher than acceptable reported and represented risk, of
26 adverse side effects. Those side effects include neurodevelopmental disorders in children, such
27 as ADHD.
28

1 134. As a direct and proximate result of Defendant's breach of express warranty,
2 Plaintiffs have suffered permanent injuries, significant pain and suffering, emotional distress,
3 lost wages and earning capacity, and diminished quality of life. Plaintiffs respectfully seek all
4 damages to which they may be legally entitled.

5
6 **PUNITIVE DAMAGES**

7 135. Plaintiffs incorporate by reference the allegations in all prior paragraphs.

8 136. Defendant failed to adequately test and study the Kirkland APAP to determine
9 and ensure that the Kirkland APAP was safe and effective prior to releasing them for sale for
10 human consumption.

11 137. Further, Defendant continued to manufacture and sell the Kirkland APAP after
12 obtaining knowledge and information that they were defective and unreasonably unsafe in that
13 they did not include adequate warnings.

14 138. Defendant was aware of the probable consequences of the dangerous and
15 defective product, including the risk of neurodevelopmental disorders in children, such as
16 ADHD, when they suffered prenatal exposure.

17 139. At all material times, Defendant knew or should have known that the Kirkland
18 APAP was inherently dangerous with respect to the following: the risk of neurodevelopmental
19 disorders in children, such as ADHD, when they suffered prenatal exposure; pain and suffering;
20 loss of life's enjoyment; and unsuccessful treatments to cure the conditions proximately related
21 to the use of the Kirkland APAP, as well as the other permanent and lasting severe personal
22 injuries.

23 140. Defendant's misrepresentations included knowingly withholding material
24 information from consumers and the public, including Plaintiff Mother, concerning the safety
25 and efficacy of the Kirkland APAP, which deprived Plaintiff Mother of vitally necessary
26
27
28

1 information with which to make a fully informed decision about whether to use the Kirkland
2 APAP.

3 141. At all material times, Defendant also knew and recklessly and/or intentionally
4 disregarded the fact that the Kirkland APAP can cause debilitating and life-altering side effects
5 with greater frequency than safer alternative methods, products, and/or treatments. But
6 Defendant recklessly failed to advise the medical community and the general public, including
7 Plaintiff Mother, of that fact.
8

9 142. At all material times, Defendant intentionally misstated and misrepresented data;
10 and Defendant continues to misrepresent data so as to minimize the perceived risk of injuries and
11 the rate of complications caused by or associated with the Kirkland APAP.
12

13 143. Notwithstanding the foregoing and the growing body of knowledge and
14 information regarding the true and defective nature of the Kirkland APAP, with its increased risk
15 of side effects and serious complications, Defendant continues to aggressively market the
16 Kirkland APAP to consumers, including the pregnant community at large, without disclosing the
17 true risk of the complications and side effects.
18

19 144. When Plaintiff Mother consumed the Kirkland APAP and since then, Defendant
20 has known the Kirkland APAP was defective and unreasonably dangerous without an adequate
21 warning. But Defendant continued to manufacture, produce, assemble, market, distribute, and
22 sell the Kirkland APAP to the pregnant community so as to maximize sales and profits at the
23 expense of the health and safety of expecting mothers in a conscious, reckless, and/or intentional
24 disregard of the likely and foreseeable harm caused by the Kirkland APAP to members of the
25 public, including Plaintiffs.
26

27 145. At all material times, Defendant has concealed and/or failed to disclose to the
28 public the serious risks and the potential complications associated with the Kirkland APAP, so as

1 to ensure continued and increased sales and profits and to the detriment of the public, including
 2 Plaintiffs.

3 146. Defendant's acts and omissions are of such character and nature so as to entitle
 4 Plaintiffs to an award of punitive damages in accordance with applicable statutory and common
 5 law. Defendant's conduct shows willful misconduct, malice, fraud, wantonness, oppression, or
 6 that entire want of care, raising the presumption of conscious indifference to consequences,
 7 thereby justifying an award of punitive damages.
 8

9 WHEREFORE, Plaintiffs demand judgment against Defendant individually, and jointly
 10 and severally. Plaintiffs also request compensatory damages, punitive damages, or enhanced
 11 compensatory damages, together with interest, costs of suit, attorneys' fees, and such further
 12 relief as the Court deems equitable and just.
 13

14 **PRAYER FOR RELIEF**

15 Plaintiffs demand judgment against Defendant, individually, and jointly and severally,
 16 and prays for the following relief in accordance with applicable law and equity:

- 17 i. Compensatory damages to Plaintiffs for past, present, and future damages,
 18 including pain and suffering for severe and permanent personal injuries
 19 sustained by Plaintiffs, permanent impairment, mental pain and suffering,
 20 loss of enjoyment of life, health and medical care costs, economic
 21 damages, together with interest and costs as provided by law;
 22
- 23 ii. Restitution and disgorgement of Defendant's profits;
- 24 iii. Punitive or enhanced compensatory damages;
- 25 iv. Reasonable attorneys' fees as provided by law;
- 26 v. Past and future costs of all proceedings;
- 27 vi. All ascertainable economic damages;
 28

- vii. Prejudgment interest on all damages as allowed by law; and
- viii. Such other and further relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demands a trial by jury on all issues so triable.

DATED this 2nd day of June 2022.

Respectfully submitted,

JOLLEY URGAL WOODBURY & HOLTHUS

By: /s/Brian E. Holthus, Esq.
Brian E. Holthus, Esq.
50 S. Stephanie Street, Suite 202
Henderson, Nevada 89012

KELLER POSTMAN LLC
Warren Postman (*Pro Hac Vice forthcoming*)
wdp@kellerpostman.com
1100 Vermont Avenue, N.W., 12th Floor
Washington, D.C. 20005
Phone: (202) 918-1123
Facsimile: (312) 971-3502

Ashley Keller (*Pro Hac Vice forthcoming*)
ack@kellerpostman.com
Ashley Barriere (*Pro Hac Vice forthcoming*)
ashley.barriere@kellerpostman.com
150 N. Riverside Plaza, Suite 4100
Chicago, IL 60606
Phone (312) 741-5222
Facsimile: (312) 971-3502

*Attorneys for Plaintiff Anastasia Reveal
Individually and as Mother, General Guardian of
K.W., a Minor*